



State of Arizona  
**Department of Education**

**Tom Horne**  
Superintendent of  
Public Instruction

**CN# 10-05**

**MEMORANDUM**

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**To:** School Health & Nutrition Program Sponsors

**From:** Mary Szafranski, Deputy Associate Superintendent  
Arizona Department of Education, Health & Nutrition Unit

Holly Mohr, Program Director  
Arizona Department of Education, School Health & Nutrition Programs

**Date:** 10/22/2004

**RE:** Executive Management Services (EMS), Inc.

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In recent months Local Education Agencies (LEA) have contacted the Arizona Department of Education, School Health and Nutrition Programs with questions regarding Executive Management Services (EMS), Inc. and their role in the National School Lunch Program. This memo will provide clarification in regard to EMS and is a summary of the USDA's APB:SP-99-08 dated December 23, 1998 and APB:CNP-00-11 dated June 5, 2000.

EMS is a private, for-profit company that assists residential child care institutions (RCCIs) in developing and operating their school meal programs. USDA met with representatives from EMS on June 16, 1998. During that meeting, EMS representatives described the services that it provides to RCCIs. EMS does not prepare the food, but it plans menus, reviews production records, and manages the enrollment, meal count, and claims processes. Taken as a whole, these services go beyond merely providing advice or technical assistance. **Therefore, EMS is a Food Service Management Company (FSMC), and should be treated as such consistently.**

7 CFR 210.2 defines an FSMC as "a commercial enterprise or a nonprofit organization which is or may be contracted with by the school food authority to manage any aspect of the school food service." A company that is acting on behalf of an LEA by actually being in charge of or

directing any aspect of the food service is an FSMC. An individual or organization that performs specific, discreet services for an LEA that fall short of managing a part of the program would be a consultant. For example, an organization hired to analyze a meal service and develop menus under Assisted Nutrient Standard Menu Planning would not be managing any part of the actual meal service, and so would be a consultant. One that prepares the menus, purchases food, and prepares and serves meals is clearly an FSMC. The test is whether the company is actually *managing* some aspect of the food service, as opposed to merely providing advice, guidance or technical assistance.

LEA contracts with FSMCs are governed by the provisions of 7 CFR 210.16, and among other requirements, they must be competitively procured. The following procurement guidelines are required to comply with 7 CFR Part 210.16 and 3016.36 of the Child Nutrition Program. Price quotations are **not** required for purchases below \$5,000 but they should be fair and reasonable.

- Obtain oral price quotations from three or more vendors for goods and services costing at least \$5,000 but less than \$15,000.
- Obtain written price quotations from three or more vendors for goods and services costing at least \$15,000 but less than \$32,899 (\$50,000 for charter schools, unless exempt).
- Solicit sealed bids or proposals through a competitive process for goods and services costing over \$32,899 (\$50,000 for charter schools, unless exempt).

Local Education Agencies and RCCIs **cannot** hire a contractor to assist with the procurement (for example, to prepare the bid documents), *and* then award the same contractor a FSMC (or consultant) contract. To do so would be a conflict of interest.

Please see the Arizona Department of Education *Child Nutrition Programs Guidance Manual*, Section 10 at: [www.ade.az.gov/health-safety/cnp/nslp/](http://www.ade.az.gov/health-safety/cnp/nslp/) for more information on procurement.

In order to do business with a Food Service Management Company (FSMC) the following documents must be provided to the ADE, Health and Nutrition Contracts Officer, Brian Walsh, 1535 W. Jefferson, Bin #7, Phoenix, AZ 85007 for review and approval by ADE before food service operations may begin. **Note: A completed on-line application must also be approved to receive reimbursement for claims.**

- a. An unsigned copy of the contract
- b. A signed copy of the certification regarding debarment and suspension (FSMC only)
- c. A signed copy of the certification regarding lobbying (FSMC only)
- d. A signed copy of the disclosure of lobbying activities (FSMC only)

If you have questions or concerns regarding this memo, please contact your assigned School Health & Nutrition Program Specialist.

Tristine Bogle (602) 542-8703  
Kacey Frey (602) 542 8705  
Traci Grgich (602) 364-1625  
Nicholas Dunford (602) 542-8740

Pat Johnson (602) 542-8782  
Katrina Klatt (602) 542-8711  
Stacey Patterson (520) 628-6776  
Lynn Ladd (602) 364-0461

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